IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9265 of 2007(C)

PETITIONER:

M/S.STABILIX SOLUTIONS PVT LTD.,
212, 'NILA', TECHNO PARK CAMPUS, KARIAVATTOM,
THIRUVANANTHAPURAM- 695 581,
REPRESENTED BY ITS DIRECTOR
SHRI LYJU ALEXANDER THOMAS.

BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS:
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1. **THE INCOME TAX OFFICER, WARD-1(1),**
   THIRUVANANTHAPURAM.

2. **THE COMMISSIONR OF INCOME TAX,**
   AYYAKKAR BHAVAN, KAWDIAR, THIRUVANANTHAPURAM.

3. **THE COMMISSIONER OF INCOME TAX(APPEALS)**
   AYAKKAR BHAVAN, KAWDIAR, THIRUVANANTHAPURAM.

BY ADV.SRI.GEORGE K.GEORGE, SC, IT, G.O.I.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.9265/2007 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ASSESSMENT ORDER DTD. 29/12/2006 PASSED BY THE FIRST RESPONDENT.**

EXT.P2: **COPY OF MEMORANDUM OF APPEAL DTD. 29/01/2007 FILED BY THE PETITIONER TO THE 3RD RESPONDENT.**

EXT.P3: **COPY OF LETTER DTD. 29/01/2007 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.**

EXT.P4: **COPY OF REPLY DTD. 1/03/2007 ISSUED BY THE 1ST RESPONDENT.**

EXT.P5: **COPY OF NOTICE U/S. 221(1) DTD. 20/02/2007 ISSUED BY THE FIRST RESPONDENT.**

EXT.P6: **COPY OF LETTER DTD. 5/03/2007 SUBMITTED TO THE 2ND RESPONDENT BY THE PETITIONER.**

EXT.P7: **COPY OF LETTER DTD. 14/03/2006 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9265 of 2007-C

Dated this the 21st day of March, 2007

JUDGMENT

The petitioner feeling aggrieved by Ext.P1 assessment order of income tax has filed Ext.P2 appeal before the third respondent. Simultaneously, it submitted Ext.P3 application before the assessing authority under Section 220 (6) of the Income Tax Act praying to treat it as not in default in respect of the amount disputed by it in the appeal. The said application was disposed of by the assessing authority by Ext.P4 dated 1-3-2007, which reads as follows:

> "With reference to the above, it is hereby brought to your notice that stay cannot be granted by this office. You are requested to obtain stay from any higher authority or pay the demand failing which I may be constrained to take coercive steps for collection of the demand. Your reply, if any, may be furnished on or before 7-3-2007."

Thereafter, the petitioner has been served with Ext.P5 demand notice. This writ petition is filed challenging Exts.P4 and P5.

2. Heard the learned Standing Counsel for the respondents.

3. Since the appeal is pending, the petitioner can move the appellate authority for stay of Ext.P1 assessment order. So, the petition presented under Sec.220 (6) of the Income Tax Act is redundant and unnecessary.

4. The petitioner's right to represent under Section 220 (6) is a statutory right. When an application is filed under that provision, the assessing authority is bound to pass orders on it, in accordance with law. The power conferred on him is a power coupled with duty which has to be exercised when an application is made by a person interested and circumstances warranting exercise are shown. The petitioner has remedies before the appellate authority. But that is not a ground not to consider its application under Section 220 (6), in accordance with law. Therefore, Ext.P4 is quashed. The first respondent is directed to pass fresh orders on Ext.P2 in accordance with law, within two weeks from the date of production of a copy of this judgment. If the petitioner produces a copy of this judgment all further proceedings pursuant to Ext.P5 will be kept in abeyance for a period of three weeks from today.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS